



MEMORANDUM

GOE

AGENDA ITEM NO. 2 (JJ)

107.07-17A MIAMI-DADE/GSA-MAT. MGT.

TO: Honorable Chairperson Barbara Carey-Shuler, Ed. D.
and Members, Board of County Commissioners

DATE: September 16, 2003

FROM: George M. Burgess
County Manager

SUBJECT: Resolution Authorizing
Execution of Settlement
Agreement between Acutec,
Inc. & Miami-Dade County

RECOMMENDATION

It is recommended that the Board of County Commissioners adopt the attached resolution which authorizes the execution of a settlement agreement between Acutec, Inc. (Acutec) and Miami-Dade County (County) to settle various claims in connection with County Contract number S-700A-5D (contract). This matter was mediated before retired judge Herbert Klein, with the assistance of the County Attorney's Office.

BACKGROUND

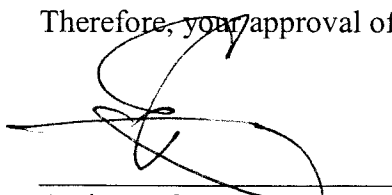
Acutec was awarded this contract to upgrade an existing sewer pump station located at 10889 W. Flagler Street in Miami-Dade County, Florida. The construction work involved the removal of an old wet well and installation of a new wet well, replacing the sewer lines feeding into the wet well, and connecting the new wet well to a different sewer line. The wet well is a large horizontal concrete cylinder, of approximately nine feet in diameter and twenty-two feet deep. Wastewater from homes and businesses in the area flows through the pump station site via the wet well and is pumped out into the sewage collection system and then on to the wastewater treatment plant. Acutec encountered substantial difficulty in completing this work, partially due to the underground location of non-County utilities in an area where Acutec had not initially expected to work. The Miami-Dade Water and Sewer Department (Department) was aware of these existing underground utilities in Acutec's work area; however, the utilities may not have been located precisely where the Department believed them to be as shown on the "as-built" drawings. Acutec contends that these utilities were not where the Department believed them to be, nor where the Department showed them to be on the design plans. Acutec further argues that the location of the utilities made it impossible to install the wet well at the location shown on the design plans; and, given that the Department allowed them to install the well at a location different from that shown on the design plans, Acutec's claim has sufficient force to justify the current settlement.

These existing underground utilities rendered Acutec unable to set the wet well at the originally designed location, despite several attempts to do so; the wet well was eventually set further north than was called for in the design plans, requiring the wet well to be patched and re-cored prior to service. As a result of these difficulties, Acutec asserted \$335,000.00 in claims against the County; of this amount, Acutec claimed that approximately \$90,000.00 resulted from its attempts to set the wet well in the proper location.

After reviewing these claims with the assistance of the County Attorney's Office, and mediation before former judge Herbert Klein, the County believes that a small subset of these claims have merit. Accordingly, the County and Acutec have settled all claims arising from this project for the sum of

Accordingly, the County and Acutec have settled all claims arising from this project for the sum of \$99,900.00. This sum represents the value of the wet well claim, plus an additional nine thousand dollars (\$9,000.00) for extra traffic maintenance required of the contractor by permit. The County believes that this offer is fair and proper, given the facts of this case and possible risks in litigation; the County believes that the remainder of Acutec's claims lack merit based on the facts now known.

Therefore, your approval of the attached resolution and settlement agreement is respectfully requested.



Assistant County Manager
PEDRO G. HERNANDEZ

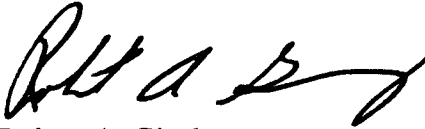


MEMORANDUM

(Revised)

TO: Hon. Chairperson Barbara Carey-Shuler, Ed.D.
and Members, Board of County Commissioners

DATE: October 7, 2003

FROM: 
Robert A. Ginsburg
County Attorney

SUBJECT: Agenda Item No.

Please note any items checked.

- ☐ "4-Day Rule" ("3-Day Rule" for committees) applicable if raised
- ☐ 6 weeks required between first reading and public hearing
- ☐ 4 weeks notification to municipal officials required prior to public hearing
- ☐ Decreases revenues or increases expenditures without balancing budget
- ☐ Budget required
- ☐ Statement of fiscal impact required
- ☐ Bid waiver requiring County Manager's written recommendation
- ☐ Ordinance creating a new board requires detailed County Manager's report for public hearing
- ☐ Housekeeping item (no policy decision required)
- ☐ No committee review

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No.

RESOLUTION NO. _____

RESOLUTION AUTHORIZING EXECUTION OF A
SETTLEMENT AGREEMENT BETWEEN ACUTEC,
INC. AND MIAMI-DADE COUNTY IN THE AMOUNT
OF \$99,900.00 TO SETTLE VARIOUS CLAIMS IN
CONNECTION WITH COUNTY CONTRACT NO. S-700
A-5D

WHEREAS, this Board desires to accomplish the purposes outlined in the
accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY
COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board hereby
approves the execution of a Settlement Agreement in the amount of \$99,900.00 between
Acutec, Inc. and Miami-Dade County to settle various claims in connection with Miami-
Dade County Contract No. S-700A-5D; in substantially the form attached hereto and
made a part hereof; and authorizes the County Manager to execute same for and on
behalf of Miami-Dade County.

The foregoing resolution was offered by Commissioner
_____, who moved its adoption. The motion was
seconded by Commissioner _____ and upon being put to a vote, the vote was as
follows:

Dr. Barbara Carey-Shuler, Chairperson
Katy Sorenson, Vice-Chairperson


Bruno A. Barreiro
Betty T. Ferguson
Joe A. Martinez
Dennis C. Moss
Natacha Seijas
Sen. Javier D. Souto

Jose "Pepe" Diaz
Sally A. Heyman
Jimmy L. Morales
Dorin D. Rolle
Rebeca Sosa

The Chairperson thereupon declared the resolution duly passed and adopted this 7th day
of October, 2003. This resolution shall become effective ten (10) days after the date of its
adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an
override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

Approved by County Attorney as
to form and legal sufficiency 

Dave Murray

By: _____
Deputy Clerk

SETTLEMENT AGREEMENT BETWEEN

ACUTEC INC.

AND

**MIAMI-DADE COUNTY, BY AND THROUGH MIAMI-DADE WATER AND SEWER
DEPARTMENT, A DEPARTMENT OF MIAMI-DADE COUNTY**

This Settlement Agreement is entered into on this _____ day of _____, 2003, by and between Miami-Dade County ("the County") and The Acutec Inc. ("Acutec");

WHEREAS, the County and Acutec are party to a contract known as S-700 A-5D ("the Contract"); and

WHEREAS, the contract required Acutec to remove and replace a sewage pumping station on Flagler Street in a designated time period; and

WHEREAS, Acutec was unable to complete the work within the times specified in the contract; and

WHEREAS, Acutec contends these delays were beyond its control; and

WHEREAS, Acutec has asserted various claims against the County arising from its performance of the Contract; and

WHEREAS, the County has, as a result of Acutec's failure to timely complete the work retained as liquidated damages funds to which Acutec contends it is lawfully entitled under the contract; and

WHEREAS, the County and Acutec desire to completely resolve and settle all issues arising from the County's performance of the contract, including all claims for damages, penalties, or costs of any nature incurred, including both direct and indirect costs incurred by the County, Acutec, and certain named officers of Acutec,

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth below, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, Acutec and the County agree as follows:

1. Pursuant to the execution of this Agreement, the County shall pay to Acutec the balance of monies currently being held under the Contract, in the amount of \$164,044.49 and shall pay to Acutec an additional ninety nine thousand nine hundred dollars (\$99,900.00) within sixty days of the execution of this agreement. Miami-Dade County shall further waive all liquidated damages to which it may be entitled pursuant to the Contract.

2. Notwithstanding anything contained herein, Miami-Dade County shall deduct from the payments to Acutec contemplated above sufficient sums as are necessary to compensate Miami-Dade County for work under the Contract which Acutec has failed to perform, said sum not to exceed \$18,350.00. In the event Acutec performs this work, an equivalent portion of the withheld sum shall be paid to Acutec; in the event, Acutec fully performs all work remaining on the project, the full value of the withheld sum shall be paid to Acutec expeditiously following the permit close out and presentation of appropriate paperwork by Acutec to the County.

3. Notwithstanding anything contained herein, this Agreement shall not be construed as waiving or limiting any claims as may be held by the County against Acutec for violations of the County's Living Wage Ordinance as may have occurred pursuant to the Contract, and the County expressly retains the right to take all actions permitted at law to remedy such violations. Nothing contained herein shall be construed as waiving or limiting any claims as may be held by the County against Acutec pursuant to any violation of any permit issued Acutec pursuant to its work on the Contract.

4. Acutec and the County waive any and all claims at law or equity each party has or may accrue against the other, its agents, employees, and officials, arising

out of the performance of the contract on or before the effective date of this agreement. Acutec and the County do not waive any claims which may arise out of the performance of the Contract subsequent to the effective date of this agreement. The County does not waive any claims it may have against Acutec as a result of latent defects in the work.

3. Neither Acutec nor the County admit of any liability or wrongdoing in the performance of the contract.

4. This agreement is complete and contains the full understanding of the Acutec and the County. This agreement may not be modified without the express written consent of Acutec and the County. This agreement supersedes all other terms, provisions, or specifications of any prior documentation or agreement as may exist between the Acutec and the County.

5. This agreement shall be interpreted under Florida law. Venue for any litigation relating to this Agreement shall be had in Miami-Dade County, Florida.

6. This agreement, and each and every term herein, shall be presented to the Miami-Dade County Board of County Commissioners for ratification following the affixing of signatures hereto by the parties. This agreement become effective eleven (11) days after ratification by the Miami-Dade County Board of County Commissioners, but if the Board of County Commissioners does not ratify this agreement, or if the Mayor of Miami-Dade County veto's said ratification, this agreement shall be void and of no legal effect, and in such circumstances no payments made by the County to Acutec be construed as waiving or voiding any rights as may be held by the County pursuant to Acutec's performance of the Contract.

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement on
the day and year first above written.

Witnesses:

[Signature]
Harvey Ruvin

The ACUTEC GROUP OF COMPANIES.

By:

[Signature]

Print Name:

Tony WEDDERBURN

Title:

President

Attest:

Harvey Ruvin, Clerk

MIAMI-DADE COUNTY

By Its Board of County Commissioners

By:

Deputy Clerk

By:

County Manager

Approved as to form and
Legal sufficiency:

Assistant County Attorney